

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

SETH MCGURGAN,

Plaintiff,

v.

**WHEEL PROS, INC.; FUEL OFF-ROAD
WHEELS, INC.; AND ALABAMA
PRECISION POWER SPORTS,**

Defendants

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Case No. 6:22-cv-00006

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant Fuel Off-Road Wheels, Inc. (“Fuel”) hereby removes this action from the 414th District Court, McLennan County, Texas, to the United States District Court for the Western District of Texas.

STATE COURT LAWSUIT

1. This case involves a Texas citizen and resident, Plaintiff Seth McGurgan, who was allegedly injured when attempting to mount a tire on a wheel. On 09-17-2021, Plaintiff filed suit against Fuel, Wheel Pros, Inc. (“Wheel Pros”) and Alabama Precision Power Sports (“Alabama”) in the 414th District Court, McLennan County, Texas, Cause No. 2020-2851-5, claiming that his injuries were caused Defendants’ alleged negligence. Both Wheel Pros and Fuel have appeared and answered in this matter. According to a return of service filed by Plaintiff, Plaintiff served citation for Alabama on the Texas Secretary of State on 12-08-2021. Alabama has not appeared and answered at the time of the filing of this Notice.

2. Fuel now removes this case to this Court based on diversity jurisdiction.

GROUNDS FOR REMOVAL

3. This action is removable pursuant to 28 U.S.C. § 1441. As set forth herein, this Court has original diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) because this action is between citizens of different states, and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

4. Minimal Diversity Requirement. As alleged in the State Petition, attached hereto, this action is between citizens of different states. Upon information and belief, including the representation of Plaintiff's counsel and the site of the alleged incident, Plaintiff is an adult citizen and resident of Texas. **Exhibit A**, Plaintiff's First Amended Petition. Wheel Pros and Fuel are citizens of foreign states. Specifically, Wheel Pros is a Colorado limited liability company with its principal place of business located at 5347 S. Valentia Way, Suite 200 Greenwood Village, Colorado, 80111; and Fuel is a brand name of Mobile Hi-Tech Wheels, LLC, a California limited liability company with its principal place of business located at 19200 S. Reyes Avenue Rancho Dominguez, California 90221. According to Plaintiff's live pleading, Alabama is an Alabama corporation with its principal place of business located at 83020 Tallassee Hwy, Eclectic, Alabama 36024. Consequently, complete diversity exists because Plaintiff is a citizen of Texas, Wheel Pros is a citizen of Colorado, Fuel is a citizen of California and Alabama is a citizen of Alabama.

5. Amount in Controversy Requirement. The amount in controversy in this action exceeds the sum or value of \$75,000, exclusive of interest and costs. Plaintiff seeks "monetary relief . . . over \$1,000,000.00." **Exhibit A** at ¶ 18.

PROCEDURAL REQUIREMENTS

6. Timeliness of Removal. This Notice of Removal is timely because it is being filed within 30 days of Fuel receiving, through service or otherwise, a copy of the Plaintiff's Original Petition. 28 U.S.C. § 1446(b)(1). Fuel was served through the Texas Secretary of State on 12-08-21.

7. Consent to Removal. Wheel Pros consents to removal of this matter as required by 28 U.S.C. § 1446(b)(2)(A). Alabama has yet to be served for removal purposes, and thus its consent is not required. *See Hopkins & Raines, Inc. v. Lakeland Motors*, 2014 U.S. Dist. LEXIS 200366 *6-7 (E.D. Texas 2014); *Med. Staffing Network, Inc. v. Health Care Capital, Inc.*, 2004 U.S. Dist. LEXIS 23213 *3-4 (N.D. Texas 2004).

8. Removal to Proper Court. This Court is the appropriate court to which this action must be removed because it is part of the district and division within which this action is pending, namely, McLennan County, Texas. 28 U.S.C. §§ 1441(a), 1446(a).

9. Filing and Service. As required by 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be contemporaneously filed in the 414th Judicial District Court and served on all counsel of record.

10. Pleadings and Process. Fuel has not been served with any process, pleadings, or orders in this action other than the Citation and Plaintiff's First Amended Petition. *See* 28 U.S.C. § 1446(a).

Respectfully submitted,

**WATSON, CARAWAY,
MIDKIFF & LUNINGHAM, LLP**

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WHEEL PROS, LLC AND
FUEL OFF-ROAD WHEEL, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies on this 3rd day of January, 2022, that a true and correct copy of the foregoing document was served via e-mail on all parties in accordance with the Federal Rules of Civil Procedure.

/s/ Brian Scott Bradley
Brian Scott Bradley